

IN SENATE OF THE UNITED STATES.

JULY 14, 1842.

Ordered to be printed.—To accompany H. R. bill 92.

Mr. WRIGHT submitted the following

REPORT :

*The Committee of Claims, to which has been referred the bill from the House entitled, "An act for the relief of Barnabas Palmer," report :*

That the facts in relation to this claim are briefly, that the claimant was, in 1837 and 1838, collector of the customs for the district of Kennebunk, in the State of Maine ; that in the month of December, 1837, Joshua Hewick, a deputy of the said collector, and acting for him in his office, received from one Eliphalet Perkins, in payment of a revenue bond, a note of the Commonwealth Bank of Boston, in the State of Massachusetts, of the denomination of \$500 ; that the claimant had been instructed by a circular from the Secretary of the Treasury to retain in his hands money to meet the claims upon his office for fishing bounties and allowances ; that he retained this bank note for that object ; that in January, 1838, the said Commonwealth Bank of Boston failed, the said \$500 note remaining in the hands of the claimant ; that soon after the failure of the bank, he, by the advice of the collector of the customs for the port of Boston, transmitted the said note to him, and had it sold in Boston for the highest price it would command, that being seventy cents on the dollar, or \$350 for the \$500 note, thus occasioning a loss to the claimant of \$150, and the bill directs the payment of this loss out of the public Treasury.

The laws of the United States have *commanded* the receipt, by the collecting officers of the Government, in payment of the public dues, of nothing but gold and silver coin and certain specified evidences of public debt, but *permission* has been given to receive the notes of the local banks which were payable and paid on demand in gold and silver coin at the place where made payable.

It is a matter of public history, that the local banks of all the States, with very few exceptions, suspended the payment of their notes in specie in the month of May, 1837, and that the Commonwealth Bank of Boston was one of the banks which did so suspend specie payments at that time, and the committee believe it never resumed those payments up to the time of its entire failure in January, 1838.

The notes of this bank, therefore, were not by law receivable in payment of public dues at any time between the month of May, 1837, and its failure in January, 1838, and any receiving officer or agent of the Government who shall have received the notes of the Commonwealth Bank of Boston between those dates must have received them not simply without any obligation of law to take them, but against any authority of any law of the United States to receive any such paper in payment of the public dues.

Thomas Allen, print.

The claimant and the committee of the House seem to place the claim, partly at least, upon the ground that he had been directed by the Secretary of the Treasury to retain money collected by him to pay fishing bounties and allowances, and that he did retain this bank note for that purpose. The committee can not see any force in this ground of claim, as the direction of the Secretary to the claimant was to retain *money*, leaving him to the laws to determine what he was to receive as money in payment of the public dues, and that he was to retain.

Beyond this, the committee find that a circular was issued from the same Treasury Department immediately upon the general suspension of specie payments by the State banks in May, 1837, bringing to the notice of all the collecting officers of the Government the provisions of law in force, both as to the receipt and payment of bank paper, a copy of which circular, the committee can not doubt, was sent to every collector of the customs, and to the claimant as one of those officers; and the receipt in payment of any public due, after the notice contained in the said circular, was not only a receipt without and against the law, but with express notice from the head of the Department to which the claimant was subordinate that the receipt of any such medium *as money* would be at the risk of the officer receiving the same.

Under such circumstances, the committee can not see the ground of claim, either in law or equity, in this case; and they find themselves compelled to differ from the committee of the House in relation to this bill, with less reluctance, because they are compelled to suppose that committee mistook the facts of the case, as the bill upon its face says, "being the amount of loss sustained by him, as collector of customs, on money *deposited* in the Commonwealth Bank of Boston in December, eighteen hundred and thirty-seven." It will be seen from the statement of facts which the committee has given, and which statement is carefully made from the proofs referred to it with the bill, that no pretence of a *deposit* of this note anywhere is made, but that the claim is put upon the ground that, after its receipt in payment of a revenue bond, it was retained in the hands and keeping of the claimant himself until the bank had failed, when the note was sold for what it would bring in the market, and the loss to the claimant resulted from that sale of the note below its par value. Had the note been deposited in a bank in which the public deposits were kept, and the loss sustained by reason of the inability of the bank to repay the deposit, the case presented would, in the opinion of the committee, be a very different one, whether the claimant would, in such a case, be entitled to relief or not.

It should be recollected that all deposits were to be made by the collecting officers to the credit of the Treasurer of the United States, and hence that, if the bill had been received in deposit from this claimant by any deposit bank, his liability would have ended, and the question, in case of a failure of the bank to pay the deposit, could not have been one between him and the bank, or him and the Government, but between the Treasurer of the United States and the one or the other of those parties.

In any aspect, therefore, in which the committee can view the case, they are compelled to believe that this bill ought not to pass, and recommend to the Senate the adoption of the following resolution:

*Resolved*, That the bill be indefinitely postponed.